IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16333 of 2005
With
SPECIAL CIVIL APPLICATION No. 8647 of 2006
With
SPECIAL CIVIL APPLICATION No. 9823 of 2006
with

CIVIL APPLICATION No.4863 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PAGI LALABHAI DHUDABHAI - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :

SCA NO.16333 OF 2005
MR CB UPADHYAY FOR ANAVATY ADVOCATES for Petitioner(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 1 to 4
MR VIPUL S MODI for Respondent(s) : 5,

SCA NO.8647 & 9823 OF 2006

MR CB UPADHYAY for the petitioners
MS REETA CHANDARANA, AGP for respondent Nos.1 to 4
MR VIPUL S MODI for Respondent(s) : 5

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 12/06/2006

ORAL JUDGMENT

1. In Special Civil Application No.16333 of 2005 rule is already issued. Learned AGP Mr.Gori appears for respondent Nos.1 to 4 and learned advocate Shri Modi appears for respondent No.5.

2. Rule in Special Civil Applications Nos.8647 of 2006 and 9823 of 2006. Learned AGP Ms.Chandarana waives service of notice of rule on behalf of respondent Nos. 1 to 4 and Shri Modi waives service of notice of rule on behalf of respondent No.5.

3. At the joint request of the learned advocates appearing for the parties, these three petitions involving similar questions of law and facts have been heard together and are being disposed of by this common order.

4. The petitioners claiming to be belonging to Scheduled Tribe had received certificates from the Mamlatdar who is the competent authority for issuance of such certificates. On the basis of the claim that they are members of Scheduled Tribe and on the basis of the certificates issued by the Mamlatdar in this regard, the petitioners had obtained admission in PTC course.

Such admissions were, however, provisional since the Government had some doubt about the caste status of the petitioners. However, in the opinion of the Government the caste certificates issued in favour of the petitioners by the Mamlatdar were on the basis of false information supplied by the petitioners and on the basis of their misrepresentations. The admission of the petitioners were therefore cancelled by the orders passed by the respondents which are impugned in these petitioners.

5. In the nutshell, it is the case of the petitioners that the Mamlatdar who is the competent authority to issue caste certificate had after proper verification of facts issued certificates in favour of the petitioners declaring them to be members belonging to Scheduled Caste. The respondents, however, without cancelling the caste certificates and without giving proper opportunity of being heard to the petitioners cancelled their admission in PTC course solely on the basis of the conclusion drawn by the Vigilance Officer that the caste certificates were not genuine. It is the case of the petitioners put-forth by the learned advocate Shri Upadhyay that the respondents ought to have given a reasonable opportunity of being heard to the

petitioners before deciding to ignore the caste certificates.

6. Learned AGPs Shri Gori and Ms.Chandarana appearing for the Government opposed the petitions. They submit that the report was called from the Mamlatdar by the Vigilance Officer. The Mamlatdar categorically stated that the caste certificates were issued on the basis of the information supplied by the petitioners which was inaccurate. It is submitted that the petitioners were given an opportunity of representation before the Vigilance Officer passed the impugned orders.

7. It is not in dispute that the Mamlatdar who is the competent authority for issuance of caste certificate had in fact issued such certificates in favour of the petitioners. It is not the case of the Government that the petitioners produced bogus certificates purported to have issued by the Mamlatdar. The dispute raised by the respondents, however, is that such certificates were obtained through misrepresentation.

8. If the petitioners have obtained certificates which are founded on incorrect information or by misrepresentation, surely it will be open for the respondents to recall such certificates and even to cancel the provisional admission given to the

petitioners. However, such steps cannot be done without following the principles of natural justice. In the case of Gulzar Singh v. Sub-Divisional Magistrate & another, 1999(2) SCSLJ 218, the Hon'ble Supreme Court observed that it cannot be denied that with the issuance of the Scheduled Caste certificate, certain rights accrued to the appellant and if this certificate was to be cancelled on the basis of some inquiry which had been conducted by the department, it was incumbent on the department, keeping in view the principles of natural justice, to issue a show-cause notice to the appellant requiring him to explain as to why the certificate should not be cancelled. If there were statements of other persons which were recorded on the basis of which the Department came to the conclusion that the appellant was not a member of Scheduled Caste, then fairness would require that the statements should be put to the appellant before a final decision is taken.

9. In the facts of the present cases, the respondents called for the reports of the Mamlatdar who appears to have stated that the caste certificates were issued on the basis of the information supplied by the petitioners which was found to be inaccurate. It also

appears that additional material was also taken into consideration by the respondents while passing the impugned orders. It may be that notice was issued to the petitioners before the authorities passed the impugned orders. Nevertheless, the reports of the Mamlatdar were never supplied to the petitioners before the final decision was taken. If there were additional materials which the respondents wanted to take into account before concluding the issue of the status of the petitioners, the same also ought to have been supplied to the petitioners.

10. In the result, I find that the orders impugned in these petitioners suffer from violation of principles of natural justice. The State Government through the Deputy Commissioner of Tribal Development Department shall take a fresh decision with respect to the caste status of the petitioners after supplying the material that may be adverse to the petitioners upon which reliance is sought to be placed. The above exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order. If the petitioners request for personal hearing, in peculiar facts of the present cases, the same may also be considered. For the above purpose, the impugned orders

are quashed. However, until such time the respondents pass the fresh order as directed hereinabove, the petitioners will not be entitled to appear in the examination for the courses in question. With these directions, the petitions are disposed of. Rule is made absolute to the above limited extent with no order as to costs.

11. In view of the order passed in the main matter, no separate order is required in the Civil Application and the same is also disposed of.

(Akil Kureshi, J.)

(vjn)